

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ARNOLD ANDERSON,

v.

WILLIAM GITTERE, et al.,

Respondents.

Case No. 3:22-cv-00070-ART-CSD

SCHEDULING ORDER

Following upon the entry of appearance (ECF No. 24) by the Federal Public Defender,

It is ordered that the Federal Public Defender, through Kimberly Sandberg, Esq., is appointed as counsel for petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel will represent petitioner in all federal proceedings related to this matter, including any appeals or certiorari proceedings, unless allowed to withdraw.

It is further ordered that petitioner shall have until up to and including ninety days from entry of this order within which to file an amended petition and/or seek other appropriate relief. Neither the foregoing deadline nor any extension thereof signifies or will signify any implied finding as to the expiration of the federal limitation period and/or of a basis for tolling during the time period established. Petitioner remains responsible for calculating the running of the federal limitation period and timely asserting claims, without regard to any deadlines established or extensions granted herein. That is, by setting a deadline to amend the petition and/or by granting any extension thereof, the Court makes no finding or representation that the petition, any amendments thereto, and/or any claims contained therein are not subject to dismissal as untimely. *See Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

1 It is further ordered that respondents shall file a response to the amended
2 petition, including potentially by motion to dismiss, within sixty days of service
3 of an amended petition and that petitioner may file a reply thereto within thirty
4 days of service of the answer. The response and reply time to any motion filed by
5 either party, including a motion filed in lieu of a pleading, shall be governed
6 instead by Local Rule LR 7-2(b).

7 It is further ordered that any procedural defenses raised by respondents to
8 the counseled amended petition shall be raised together in a single consolidated
9 motion to dismiss. In other words, the Court does not wish to address any
10 procedural defenses raised herein either in seriatum fashion in multiple
11 successive motions to dismiss or embedded in the answer. Procedural defenses
12 omitted from such motion to dismiss will be subject to potential
13 waiver. Respondents shall not file a response in this case that consolidates their
14 procedural defenses, if any, with their response on the merits, except pursuant
15 to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
16 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they
17 shall do so within the single motion to dismiss not in the answer; and (b) they
18 shall specifically direct their argument to the standard for dismissal under §
19 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In
20 short, no procedural defenses, including exhaustion, shall be included with the
21 merits in an answer. All procedural defenses, including exhaustion, instead must
22 be raised by motion to dismiss.

23 It is further ordered that, in any answer filed on the merits, respondents
24 shall specifically cite to and address the applicable state court written decision
25 and state court record materials, if any, regarding each claim within the response
26 as to that claim.

27 It is further ordered that any state court record and related exhibits filed
28 herein by either petitioner or respondents shall be filed with a separate index of

1 exhibits identifying the exhibits by number. The CM/ECF attachments that are
2 filed further shall be identified by the number or numbers of the exhibits in the
3 attachment. If the exhibits filed will span more than one ECF Number in the
4 record, the first document under each successive ECF Number shall be either
5 another copy of the index, a volume cover page, or some other document serving
6 as a filler, so that each exhibit under the ECF Number thereafter will be listed
7 under an attachment number (i.e., Attachment 1, 2, etc.).

8 It is further ordered that the hard copy of any exhibits filed by either
9 counsel shall be delivered—for this case—to the Reno Clerk's Office. Courtesy
10 copies of exhibits shall not be provided.

11 DATED THIS 14th day of October 2022.

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14 ANNE R. TRAUM
15 UNITED STATES DISTRICT JUDGE
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